

## **REMARKS**

Claims 1 and 12-19 have been amended. Claim 20 has been added. Thus, claims 1-20 are pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Section 103(a) Rejection:**

The Office Action rejected claims 1 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Aldred et al. (U.S. Patent 5,719,942) (hereinafter “Aldred”) in view of Lahr (U.S. Publication 2001/0029525). Applicants respectfully traverse this rejection for at least the following reasons.

**Regarding claim 1, Aldred in view of Lahr fails to teach or suggest a first application launching a second application, wherein the launching of the second application includes the first application passing an event port number and a command port number to the second application, wherein the port numbers are stored in a memory accessible to the second application.** Instead, Aldred teaches a system for establishing a communication channel between source node and a destination node via a heterogeneous communication network (Aldred, Abstract; column 1, lines 52-55). Aldred does not teach or suggest anything regarding a first application launching the second application. Nor does Aldred mention the first application passing an event port number and a command port number to the second application *as part of launching the second application*. Instead, Aldred only teaches the forwarding of communications (requests) by one or more intermediate nodes between the source application and the destination application.

Lahr teaches a broadcast system for streaming media in which network components receive broadcast media streams, store popular content and serve media to clients. However, Lahr does not mention anything regarding a first application launching

a second application, wherein the launching includes the first application passing an event port number and a command port number to the second application.

Thus, Aldred and Lahr, both singly and in combination, fail to teach a first application launching a second application, wherein the launching includes the first application passing an event port number and a command port number to the second application.

**Applicants further note that the rejection is improper because the Examiner has not shown that Lahr qualifies as a prior art reference.** The Examiner has the burden of proof to produce the factual basis for the rejection. *In re Warner*, 154 USPQ 173, 177 (C.C.P.A. 1967), *cert. denied*, 389 U.S. 1057 (1968). Since the Examiner has not proven that Lahr qualifies as a prior art reference, the Examiner has not met this burden of proof and the rejection is improper. More specifically, Lahr was filed on January 29, 2001, after Applicants' priority date of September 28, 2000. Lahr does claim the benefit of a provisional application filed January 28, 2000. However, the January 28, 2000 filing date can only be used as Lahr's 35 U.S.C. § 102(e) prior art date for the subject matter that is common to both the Lahr patent and the provisional application. **A review of Lahr's provisional application reveals that the provisional application does not include the information relied upon by the Examiner.** Since Lahr's provisional application does not include the information relied upon by the Examiner, the rejection is improper. *See, In re Wertheim*, 209 USPQ 554 (CCPA 1981).

Moreover, Lahr's published application is not entitled to the January 28, 2000 date as a section 102(e) prior art date unless at least one claim of Lahr's published application is supported (under 35 U.S.C. § 112) in the provisional application. Under 35 U.S.C. 119(e)(1), a published utility application is not entitled to its provisional application's filing date as a prior art date unless at least one claim of the published utility application is supported (per 35 U.S.C. § 112) in the provisional application. *See also* M.P.E.P. § 2136.03(IV). Lahr's provisional application does not appear to support any of the claims of Lahr's published application. Therefore, the filing date of Lahr's

provisional application cannot be used as the section 102(e) prior art date for Lahr's published application. Thus, the rejection using Lahr is improper.

Thus, for at least the reasons presented above, the rejection of claim 1 is not supported by the prior art and removal thereof is respectfully requested. Similar remarks as those above regarding claim 1 also apply to claims 12 and 20.

The Office Action rejected claims 2-6, 8-11, 13-17 and 19 as being unpatentable over Aldred and Lahr, and further in view of Simonoff et al. (U.S. Patent 6,005,568) (hereinafter "Simonoff"), and claims 7 and 18 as being unpatentable over Aldred, Lahr and Simonoff, and further in view of Jalili et al., (U.S. Patent 5,423,042) (hereinafter "Jalili"). Applicants traverse these rejections for at least the reasons given above in regard to Aldred and Lahr.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the rejection of the independent claims has been shown to be unsupported, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicants hereby petition for such an extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-78901/RCK.

Also enclosed herewith are the following items:

- Return Receipt Postcard
- Petition for Extension of Time
- Notice of Change of Address
- Other:

Respectfully submitted,



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